



MONTANA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE POLICY

Policy No.: DOC 1.3.13	Subject: STAFF SEXUAL MISCONDUCT
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 7
Section 3: Personnel	Revision Date:
Signature: /s/ Bill Slaughter, Director	Effective Date: Oct. 18, 2005

I. POLICY:

The Department of Corrections has zero tolerance for sexual misconduct toward or with any individual under the care, custody, or supervision of the Department by any employee, volunteer, contractor, or individual agent providing services to the Department.

II. APPLICABILITY:

All Department divisions, facilities and programs.

III. AUTHORITY:

2-2-104, MCA	<i>Rules of Conduct for Public Officers, Legislators, and Public Employees</i>
2-15-112, MCA	<i>Duties and Powers of Department Heads</i>
45-2-101, MCA	<i>General Definitions</i>
45-5-502, MCA	<i>Sexual Assault</i>
45-5-503, MCA	<i>Sexual Intercourse Without Consent</i>
4-4069, ACA	<i>Standards for Adult Correctional Institutions, 4th Edition</i>
3-4081, ACA	<i>2004 Standards Supplement</i>
DOC Policy 1.3.1	<i>Human Resources Policy and Personnel Manual</i>
DOC Policy 1.3.12	<i>Staff Conduct with Offenders</i>
DOC Policy 1.3.14	<i>Misconduct Reporting Procedures</i>
DOC Policy 4.1.2	<i>Offender Orientation</i>

IV. DEFINITIONS:

Zero Tolerance – For purpose of this policy, zero tolerance means the Department will respond to every allegation of sexual misconduct. All cases will be investigated and all guilty parties will be disciplined or prosecuted according to the law.

Offender – Any person committed to the care, custody, or supervision of the Department by any court, Board of Pardons and Parole, or through judicial sanction. This definition includes offenders assigned to programs such as probation, parole, Intensive Supervision Program (ISP), Conditional Release, Prerelease, alternatives to incarceration, work or educational release, or in any capacity where employees are supervising individual offenders.

Employee – For purpose of this policy, paid employees or contracted persons, volunteers and interns who are paid or donate time or services to the Department, and individual service providers, e.g., delivery, maintenance, vendors, or other service providers who may not be contracted to the Department.

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 2 of 8
Subject: STAFF SEXUAL MISCONDUCT		

Contractor – Any person or corporation, other than an employee, providing a service to the Department (e.g., supervision, custody duties at treatment or prerelease centers, drug and mental health treatment, vocational and educational services) for an agreed-upon form of compensation. Contractors may include local government agencies that contract with the Department or individuals who have contact with offenders under the supervision of the Department in a community setting.

Collateral Contact – Any person, other than an offender, with whom an employee of the agency may come in contact for official reasons concerning an offender under the care, custody, or supervision of the Department. Collateral contacts may include, but are not limited to: offenders' families, friends and associates; offenders' employers; treatment or medical providers; offenders' teachers, instructors, trainers, or supervisors; volunteer coordinators; attorneys; and judicial personnel.

Visitor – Any person having access to any Department or agency offices and workplaces for personal or official reasons.

Volunteer – Any person who, by mutual agreement with the Department or agency, provides service without compensation, or who voluntarily assists offenders or the agency in the course of volunteer duties.

Inappropriate Relationship – A non-professional, personal relationship with an offender, which includes any one or more of the acts listed under Section A., Prohibited Contact, as evidenced by conversation, correspondence, or other observable behavior.

Retaliation – An act of revenge, either overt or covert, or threat of action taken against an offender or any other individual in response to that offender's or individual's complaint of sexual misconduct or cooperation in the reporting and investigation of alleged sexual misconduct. Forms of retaliation toward an offender may include, but are not limited to, unnecessary or excessive discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers to other institutions, unwarranted placement in protective custody, and unjustified denials of privileges or services.

Facility – A building or residence, including the property and land where the building or residence is located, owned, or leased and operated or managed by the Department.

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

Designee – The position responsible for a specific action or program will also apply to that person's designee.

V. PROCEDURES:

A. Prohibited Contact

1. Undue Familiarity

- a) any conversation, contact, personal or business dealing between an employee and an offender who is under the care, custody, or supervision of the Department that is

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 3 of 8
Subject: STAFF SEXUAL MISCONDUCT		

unnecessary or not a part of the employee's duties, and related to a personal relationship or purpose other than a legitimate correctional purpose;

- b) undue familiarity includes, but is not limited to:
 - acts of horseplay
 - betting, trading, dealing
 - socializing
 - family contact unrelated to the employee's duties
 - sharing or giving food
 - sharing or giving cigarettes
 - inappropriate personal conversation
 - exchanging correspondence
 - sexual misconduct
 - in any other manner developing a relationship with an offender that is anything other than a professional relationship;
- c) employees will limit their relationships with offenders and offender's families to officially authorized activities; and
- d) employees will conduct themselves in a manner to avoid conflict of interest or being placed in a situation that may compromise their professional integrity, compromise security, or cause embarrassment to the Department of Corrections or the State of Montana.

2. Sexual Misconduct

- a) any behavior of a sexual nature perpetrated by an employee toward an individual referenced in item d. below, that includes acts or attempts to commit such acts as:
 - sexual assault
 - sexual abuse
 - sexual harassment
 - sexual contact of the genitals, breasts, or other intimate body parts
 - conduct of a sexual nature or implication
 - obscenity and unreasonable invasion of privacy
 - conversations or correspondence that suggests a romantic or sexual relationship; *such relationships or acts, regardless of whether they are considered to be consensual by the offender, are strictly prohibited. No offender under the authority, supervision, care or custody of the Department has the ability to give consent to sexual relationships*
- b) sexual misconduct is not gender-specific and may include all four of the following gender combinations:
 - male to male
 - male to female
 - female to female
 - female to male

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 4 of 8
Subject: STAFF SEXUAL MISCONDUCT		

- c) inappropriate or offensive sex or gender-based conduct is specifically prohibited and includes such prohibited conduct as:
 - sexual advances, propositions, or flirtations
 - requests or pressure of any kind for sexual favors, activities, or contact
 - sexually explicit, graphic, abusive, degrading, intimidating, or offensive language or jokes
 - physical contact or touching of a sexual nature, including physical or sexual assault
 - display, circulation, or communication of any sexually suggestive, explicit, graphic, or offensive objects, pictures, or materials of any kind
 - d) sexual misconduct includes acts, described above, perpetrated by an employee toward the following individuals:
 - offenders under the care, custody, or supervision of the Department
 - offenders' victims
 - individuals referenced in Section IV of this policy who have contact with the Department on behalf of the offender including contractors, collateral contacts, volunteers, visitors, family members, employers, friends, and service or treatment providers
 - any other agency representatives working in an official capacity
3. Sexual Abuse
- a) sexual abuse, which is strictly prohibited, is an inappropriate abuse of power, a violation of the Eighth Amendment; and
 - b) includes, but is not limited to, subjecting another person to sexual contact by:
 - persuasion or inducement
 - enticement or forcible compulsion
 - subjecting to sexual contact another person who is legally incapable of giving consent by reason of his or her custodial status
 - subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained, or mentally incapacitated
 - raping, molesting, prostituting, or otherwise sexually exploiting another person
4. Sexual Assault
- a) defined by 45-5-502, MCA: *a person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault*; and
 - b) sexual assault includes any sexual touching or contact that is forced or coerced in any manner including, but not limited to, rape, sodomy, or any form of unlawful touching.
5. Sexual Contact
- a) behavior that includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 5 of 8
Subject: STAFF SEXUAL MISCONDUCT		

- b) any touching or inappropriate viewing with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person. This may include kissing, hugging, rubbing, massaging, touching or nonchalant rubbing against intimate body parts.

6. Sexual Harassment

- a) includes, but is not limited to, all of the following, whether by employees, volunteers, contractors, other Department representatives, or offenders:
 - sexual advances
 - sexually offensive language, comments or gestures
 - influencing, promising, or threatening any offender's or employee's safety, supervision status, conditions of supervision, custody status, or privacy, in exchange for personal gain or favor of a sexual nature
 - creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language

7. Sexualized Work Environment

- a) a work environment that becomes sexualized to the extent that it may severely erode employees' professionalism and professional boundaries, and is characterized by:
- b) behaviors, dress, and speech of either employees or offenders that create an uncomfortable, sexually-charged workplace including, but not limited to, the following:
 - sexually explicit talk
 - inappropriate emails, posted cartoons, jokes
 - unprofessional dress
 - employee off-duty behaviors, e.g., dating and other activities, that are allowed to intrude into the everyday work setting and may include talk or actions with strong sexual overtones

8. Intimacy

- a) inappropriate social or physical contact with an offender or client of a personal, romantic, sexual, or unduly familiar nature that may include, but is not limited to:
 - kissing
 - touching parts of the body not defined under sexual contact
 - sending personal letters or cards
 - making or receiving personal phone calls

9. Invasion of Privacy

- a) any act by any employee that is necessary to official departmental duties and responsibilities will not be regarded as an invasion of privacy; however,
- b) an employee's intentional observing, attempting to observe, or interfering in an offender's activities, which are of a personal nature, and not related to a sound correctional purpose will be considered an invasion of privacy.

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 6 of 8
Subject: STAFF SEXUAL MISCONDUCT		

B. Alleged Staff Sexual Misconduct

1. Mandatory Reporting

- a) any employee who observes sexual misconduct or has knowledge of sexual misconduct towards an offender, which may include offender grievances, will immediately report the information in accordance with *DOC Policy 1.3.14, Misconduct Reporting Procedures*;
- b) failure of any employee to report sexual misconduct towards an offender in accordance with the misconduct reporting policy may result in corrective or disciplinary action up to, and including, termination, termination of services, or cancellation of contract;
- c) any offender or other individual (including the general public or offender's family members) who has knowledge of alleged sexual misconduct by a staff member towards an offender should immediately report the information in accordance with *DOC Policy 1.3.14, Misconduct Reporting Procedures*; and
- d) reporting forms will be readily available in facility housing units, administrative offices, and accessible on the Internet as an attachment to *DOC Policy 1.3.14, Misconduct Reporting Procedures*.

2. Medical Referral

- a) the division or facility administrator will ensure that alleged victims of staff sexual misconduct are immediately referred to a health care professional for a medical evaluation.

3. Mental Health Referral

- a) the division or facility administrator will ensure that alleged victims of staff sexual misconduct are immediately referred to a mental health specialist for a mental health evaluation.

4. Investigation

- a) all reports of alleged instances of staff sexual misconduct will be immediately investigated in accordance with *DOC Policy, 3.1.19, Investigations*.

5. Disciplinary Action

- a) appropriate corrective or disciplinary action up to, and including, termination, will be taken whenever this policy is violated;
- b) the severity and extent of discipline will be determined on a case-by-case basis by the totality of factors and circumstances of the individual situation;
- c) employee corrective or disciplinary action will be taken in accordance with *DOC Policy 1.3.1, ATT. A., Personnel Manual Disciplinary Action (MOM 3-0130)*; and
- d) the Department will seek criminal charges when warranted.

C. Confidentiality

1. A sexual misconduct complaint, including all information and documents pertinent to the

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 7 of 8
Subject: STAFF SEXUAL MISCONDUCT		

- complaint, will be handled with sensitivity and the appropriate level of confidentiality.
- Information will only be revealed on a “need to know” basis or in defense of disciplinary or legal action.
 - Breaches of confidentiality may result in corrective or disciplinary action up to, and including, termination.

D. Records

- Mandatory reporting forms, the investigative file and any other documents pertaining to the sexual misconduct complaint will be forwarded to the Department’s Human Resources Division.
- The Department Human Resources Division will retain statistics with regard to the number and nature of sexual misconduct incidents.
- Based on information and research, the Department Director will ensure that appropriate policies, training, safety and security measures are taken to address accountability and prevention.

E. Retaliation

- Department employees will not retaliate against the complainant, the victim, the accused, witnesses, or informants involved in the filing and investigation of sexual misconduct allegations.
- Retaliation in any form may result in corrective or disciplinary action up to, and including, termination.

F. Facility and Program Procedures

- All facility and program staff with responsibility for the care, custody, or supervision of offenders will:
 - notify offenders of their protection and responsibilities by ensuring them access and review of this policy according to *DOC Policy 4.1.2, Offender Orientation*;
 - develop offender reporting procedures that allow them the opportunity to make a complaint verbally to any employee, or directly to the facility or program administrator, facility Human Resources Office or the Department’s Human Resources Division, either verbally or in writing;
 - ensure offender access to the formal grievance process in accordance with *DOC Policy 3.3.3, Offender Grievance Procedures*, and access to the reporting procedures and form contained within *DOC Policy 1.3.14, Misconduct Reporting Procedures*;
 - ensure offender access to a secured “lock box” for offender to staff communication;
 - provide for the care and treatment of individuals who are alleged or substantiated victims of sexual misconduct by staff; and
 - collect statistics on the number of reported incidents, and the number of substantiated incidents. The facility administrator will forward these to the Department Human Resources Division, in writing, on a monthly basis.

Policy No.: DOC 1.3.13	Chapter 1: Administration and Management	Page 8 of 8
Subject: STAFF SEXUAL MISCONDUCT		

VI. CLOSING:

Questions concerning this policy should be directed to the Department's Human Resources Division.